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Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Billed Party Preference	)	
For 0+ InterLATA Calls	)	CC Docket 92-77
	)	

REPLY COMMENTS OF THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL

The American Public Communications Council ("APCC") hereby replies to comments submitted on the issue of whether the Commission should restrict the use of proprietary calling cards for 0+ calling. In its comments, APCC explained that the heart of the CIID card problem is that AT&T has created, not a proprietary card,[1] but a dominant carrier card. AT&T validates this card for itself and other dominant carriers, i.e., local exchange carriers ("LECs"), but refuses to validate the card for any non-dominant carriers, operator service providers ("OSPs"), or payphone providers. As in its earlier comments on the CIID card issue, APCC urged the Commission to require AT&T to cease its discrimination against non-dominant OSPs and to make validation of its CIID cards available either (1) to all OSPs or (2) only to itself. This remedy is simple to administer, and would render moot many of the

[1]AT&T compares its CIID card to "proprietary" cards issued by MCI, Sprint, and other interexchange carriers ("IXCs"), which are "ordinarily usable for long distance calling only on the network of the issuing IXC." AT&T at 2, n. **. There is a critical difference, however. Unlike other IXCs, AT&T validates its CIID card for intraLATA long distance calls carried by LECs. Thus, AT&T's card is not a "proprietary" card as AT&T defines it because it is "ordinarily usable for long distance calling" on the LECs' networks.

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issues that have been raised regarding the relief requested by Comptel.

The comments confirm APCC's assessment of the CIID card problem and the validity of the remedy APCC has proposed. Many commentors recognize that a key factor in AT&T's anticompetitive card marketing practices is its policy of validating for other dominant carriers to create a dominant-carrier card. Comptel at 2; ITI at 16-17; Phonetel Technologies, Inc. at 3-4; ZPDI at 7.[2]

Many other parties point out the anticompetitive impact of AT&T's practices, although the particular remedies they advocate differ in some respects from that proposed by APCC.[3] Some LECs, to their credit, acknowledge the problems flowing from AT&T's discriminatory validation practices, and urge the Commission to adopt a remedy. BellSouth Telecommunications, Inc.; Pacific Bell and Nevada Bell.

The only parties that object to granting relief are AT&T and a number of LECs -- who share with AT&T the ability to validate AT&T's dominant-carrier card.[4]

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[2]As a number of parties point out, AT&T also validates its card for GTE's Airfone service. Advanced Telecommunications Corporation <u>et al</u>. at 3; ZPDI at 6.

[3]APCC wishes to make clear that it supports the grant of the relief described in the Commission's <u>Notice</u>, or any reasonable variant thereof, as long as such relief is effective in ending AT&T's discriminatory card validation practices. APCC believes only that the particular variant of relief it suggests is a straightforward and administratively simple means of achieving that result.

[4]Sprint agrees that AT&T's practices harm competition, but opposes certain remedies suggested by the parties, while suggesting its own remedy.

A number of LECs object that they will lose intraLATA revenue if AT&T's cards become truly proprietary "access code" cards. Bell Atlantic states:

> If AT&T trains its customers to dial access codes in order to use their AT&T calling card, callers will automatically dial those codes on intraLATA toll calls as well. Based on the current rate that callers are using CIID cards to charge intraLATA calls, Bell Atlantic stands to lose in excess of $20 million intraLATA operator-assisted call revenues.

Bell Atlantic at 3. See also GTE at 6; NYNEX at 2. Under APCC's proposal, LECs would indeed be precluded from serving customers who presented AT&T's card unless AT&T allowed validation of the card by other OSPs. Assuming that AT&T chose not to continue validating for any OSP, the LECs would lose revenue to AT&T unless they were able to convince their subscribers to use LEC cards. However, this would not be an undesirable result. Currently, the LECs are the only OSPs that can earn revenue from the use of AT&T's CIID cards. The LECs do not earn this revenue through their own competitive efforts. Rather, they are guaranteed the revenue --which based on Bell Atlantic's figures must be in excess of $150 million per year -- purely as a result of AT&T's anticompetitive and discriminatory policy of validating only for dominant carriers. There is no valid reason to allow the LECs to continue receiving such a windfall at the expense of fair competition.

The LECs are not particularly motivated to invest resources in promoting use of their own cards, so long as AT&T's discriminatory validation policy allows them to gain an anticompetitive advantage which they cannot obtain from their own cards. While the LECs receive validation of AT&T's card, non-dominant intraLATA OSPs (such as independent payphone providers using store-and-forward service) do not. By keeping their intraLATA 0+ traffic on AT&T's card, therefore, the LECs can achieve an anticompetitive result which the Commission has ruled they cannot achieve with their own cards. In essence, the LECs are passive partners with AT&T in the creation of a dominant-carrier card. Therefore, it is absolutely appropriate to deny the LECs the ability to gain intraLATA 0+ revenues at the expense of competitors without expending any competitive effort.

Other objections to granting relief are also without merit. AT&T claims that the validation functions in question are "billing functions" and are not subject to regulation under Titles I or II of the Communications Act. Comments of AT&T at 4. AT&T cites as authority the Commission's decision in Detariffing of Billing and Collection Services, 102 FCC 2d 1150 (1986). AT&T's argument lacks merit for several reasons. First, the cited decision addresses only billing service provided by LECs to IXCs -- it does not address billing service provided by IXCs such as AT&T. Second, the decision addresses only stand-alone billing service. It does not address validation service, nor does it address billing functions provided as part of validation service. In the LEC Joint Use Card Order, the Commission specifically distinguished LEC provision of validation services from LEC provision of billing services, and found that the former were subject to Title II regulation even though the latter were not. Policies and Rules Concerning Local

Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, Report and Order and Request for Supplemental Comment, CC Docket 91-115, FCC 92-168, para. 26 (released May 8, 1992). Further, the Commission has explicitly ruled that billing services can be regulated pursuant to its Title I jurisdiction if such regulation will protect or promote a statutory purpose. Detariffing of Billing and Collection Services, 102 FCC 2d at 1169-70. In the present case, it is necessary and appropriate to regulate AT&T's validation practices, and this can be done pursuant to either Titles I or II. APCC at 15.

AT&T also argues that subjecting AT&T to a non-discrimination requirement would be inconsistent with the Commission's recent ruling in the LEC Joint Use Card Order. Nothing in that Order precludes the application of nondiscriminatory validation requirements to AT&T. The Order merely held that AT&T's CIID cards were "IXC joint use cards," and were not "LEC joint use cards" as defined for purposes of the rulemaking. LEC Joint Use Card Order, paras. 85-86. The Order did not make any determination as to whether "IXC joint use cards," or some category thereof, should be subject to similar nondiscriminatory validation requirements. Instead, the Commission reserved that issue and expressly raised it in this rulemaking. In fact, it is entirely consistent, and a straightforward application of fundamental principles, for the Commission to rule that the nondiscriminatory validation principle which it has already found applicable to LECs is applicable to all dominant carriers, including AT&T.

AT&T's other objections are also without merit. For example, AT&T claims it would be "anticompetitive" if AT&T were required to validate its card for competitors, who charge different rates. AT&T at 4. In fact, AT&T already validates its CIID cards for certain competitors -- the LECs, with whom AT&T competes, where permitted, in the intraLATA operator service market. APCC at 8, n. 6. AT&T makes validation of its CIID cards available to hundreds of LECs, each of which charges its own -- not AT&T's -- rates, notwithstanding AT&T's alleged concern for "the interests of tens of millions of customers who have come to rely on their AT&T calling cards to assure they will receive AT&T service and AT&T rates." AT&T at 4 (footnote omitted).

AT&T also claims that other IXCs are free to do what AT&T has done with its CIID card. AT&T is wrong. No other IXC is a dominant carrier or has anything approaching AT&T's share of the 0+ presubscription market. If other IXCs attempted to do what AT&T has done -- i.e., issue a card which can be used for 0+ dialing on its own or any LEC's network, the result would be massive consumer confusion and frustration, because the card would fail to "work" more often than it succeeded.[5] Only AT&T is dominant enough to calculate that the consumer confusion and frustration it causes when its card cannot be validated are worth the additional market power it can achieve by promoting 0+ dialing.

[5] Sprint, which allows (but does not promote) 0+ dialing to reach its network from telephones presubscribed to Sprint, does not validate its card for LECs. Thus, unlike AT&T, Sprint is not encouraging its cardholders to dial 0+ and is not causing them to dial 0+ in situations where they will not reach Sprint's network.

The other objections raised by AT&T and various LECs are either meritless or inapplicable to APCC's proposed remedy. For example, AT&T and some LECs argue that it is inappropriate to force a carrier to require its customers always to dial an access code, even when they can reach the carrier's network by dialing 0+. AT&T at 5. To the extent that this objection has merit, it does not apply to APCC's proposal for nondiscriminatory validation. AT&T is not required to make its cardholders dial access codes. First, AT&T can make validation available to all carriers, instead of just to dominant carriers. In that event, no consumer would have to dial an access code to use AT&T's card. Second, even if AT&T chooses to make its card truly proprietary by withholding validation from all other carriers, AT&T would be free to continue accepting any calls that reached its network by dialing 0+. If consumers really do find it more convenient to dial 0+ <u>to reach AT&T</u>, they may continue to do so at phones presubscribed to AT&T. The only thing that would change, under APCC's proposal, is that AT&T may not continue validating a "proprietary" card, which is supposed to be used for AT&T calling alone, when a caller dials 0+ and reaches another dominant carrier.

For the same reason, the objection of AT&T and some LECs that a "0+" restriction is infeasible is also inapplicable to APCC's nondiscrimination remedy. AT&T at 8-9; Ameritech at 3; GTE at 2-3; NYNEX at 2; Sprint at 4-5. Since AT&T would be free to continue accepting 0+ calls on its own network, there would be no need for AT&T to distinguish 0+ from 10XXX calls.

CONCLUSION

The comments confirm the need for a remedy for AT&T's anticompetitive and discriminatory validation practices. The comments also confirm the feasibility of the remedy proposed by APCC, which would require AT&T to validate its CIID cards either for all OSPs or for none.

Respectfully submitted,

Robert F. Aldrich

Albert H. Kramer
Robert F. Aldrich
KECK, MAHIN & CATE
1201 New York Avenue, N.W.
Penthouse Suite
Washington, D.C. 20005-3919
(202) 789-3400

Attorneys for the American Public Communications Council